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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**  
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6 RUSSELL K. UEHARA,  
7 Plaintiff,

8 vs.

9 TD BANK, et al.,  
10 Defendants.  
11

Case No. 2:17-cv-00190-GMN-CWH

**ORDER**

12 Presently before the Court is Defendant Specialized Loan Servicing's ("SLS") Emergency  
13 Motion to Stay Discovery (ECF No. 28), filed on April 13, 2017. The Court determined that it  
14 would not be considered on an emergency basis, and ordered responses and replies in the ordinary  
15 course, but also ordered that discovery be stayed as to all parties pending the court ruling on the  
16 motion. (Min. Order (ECF No. 29).) Plaintiff Russell Uehara filed a response (ECF No. 41) on  
17 April 27, 2017. Defendant filed a reply (ECF No. 46) on May 11, 2017, along with a supplemental  
18 supporting declaration (ECF No. 47).

19 **I. BACKGROUND**

20 This Fair Credit Reporting Act ("FCRA") action arises from a dispute regarding whether  
21 SLS inaccurately reported Uehara's debts. (Am. Compl. (ECF No. 4.) Defendant SLS moved to  
22 dismiss, arguing Plaintiff has failed to allege facts sufficient to state valid state or federal claims.  
23 (Mot. to Dismiss (ECF No. 23) at 2.) Specifically, SLS argues that Plaintiff fails to adequately  
24 allege two critical elements: (1) that SLS reported an inaccurate current or past due balance for the  
25 debt or failed to report Plaintiff's discharge and (2) that Plaintiff suffered any concrete injury as a  
26 proximate result of any of Plaintiff's alleged reporting of the debt. (*Id.*) Defendant SLS moves to  
27 stay discovery pending the outcome of the motion to dismiss, arguing that the motion is case-  
28 dispositive and that discovery is therefore unnecessary.

1 Plaintiff responds that SLS failed to meet and confer in good faith, that the motion to  
2 dismiss will be denied, that the motion to dismiss will not effectively resolve the entire case, and  
3 that Plaintiff will need to conduct discovery before addressing the motion to dismiss. Defendant  
4 SLS replies and disputes Plaintiff's arguments.

## 5 **II. ANALYSIS**

6 Courts have broad discretionary power to control discovery, including the decision to stay  
7 discovery. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). When evaluating  
8 whether to stay discovery, the court considers the goal of Rule 1 of the Federal Rules of Civil  
9 Procedure, which directs that the rule must be "construed and administered to secure the just,  
10 speedy, and inexpensive determination of every action." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.  
11 597, 602 (D. Nev. 2011) (citation omitted). But the Rules do not provide for an automatic stay of  
12 discovery when a potentially dispositive motion is pending. *Id.* at 600–01. Thus, a pending  
13 dispositive motion "is not ordinarily a situation that in and of itself would warrant a stay of  
14 discovery." *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997)  
15 (quotation omitted). Nor does the fact that "discovery may involve some inconvenience and  
16 expense" automatically warrant a stay of discovery. *Id.*

17 In determining whether to stay discovery, the court considers whether (1) the pending  
18 motion is potentially dispositive of the entire case, or at least of the issue on which discovery is  
19 sought; and (2) the potentially dispositive motion can be decided without additional discovery.  
20 *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013). This  
21 analysis requires the court to take a "preliminary peek" at the potentially dispositive motion.  
22 *Tradebay*, 278 F.R.D. at 603. This assessment is meant not to prejudge a motion's outcome but,  
23 rather, to accomplish the cost- and time-saving objectives of Rule 1 by evaluating the justice of  
24 either permitting or delaying discovery. *Id.* A court may stay discovery when it is convinced that  
25 the plaintiff will be unable to state a claim for relief. *Turner*, 175 F.R.D. at 555. Ultimately, the  
26 party seeking the stay "carries the heavy burden of making a 'strong showing' why discovery  
27 should be denied." *Id.* at 556 (quotation omitted).

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1 The court now takes a “preliminary peek” at the merits of Defendant’s motion to dismiss to  
2 determine whether it is potentially dispositive of the entire case and whether the motion to dismiss  
3 can be decided without additional discovery.

4 **A. Failure to Meet and Confer**

5 Local Rule 26-7 requires that the parties meet and confer telephonically, or in person,  
6 regarding discovery disputes. Defendant SLS provides a declaration indicating that counsel for  
7 SLS and Plaintiff conferred via telephone during the Fed. R. Civ. P.: 26(f) conference and Plaintiff  
8 indicated it would not consent to stay discovery. (Decl. (ECF No. 47) at 2.) Although the Court is  
9 unable to assess the extent to which the parties attempted to resolve this dispute, the Court accepts  
10 the representation that the matter was discussed and no agreement was reached. Accordingly, the  
11 Court finds that the meet and confer was adequate.

12 **B. Likelihood of Dismissal**

13 To survive a 12(b)(6) motion to dismiss, a plaintiff must allege enough facts to state a claim  
14 that is “plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The  
15 plausibility standard . . . asks for more than a sheer possibility that a defendant has acted  
16 unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When pleading facts that do no more  
17 than infer the possibility of misconduct, a complaint has alleged, but not shown, that the plaintiff is  
18 entitled to relief. *Id.* at 679. Properly pled allegations contain “more than labels and conclusions.”  
19 *Twombly*, 550 U.S. at 555. While courts must accept as true all factual allegations in a complaint,  
20 legal conclusions do not receive the same treatment, even if couched as factual allegations. *Iqbal*,  
21 556 U.S. at 678.

22 To state an FCRA claim here, Plaintiff must plead facts establishing that (1) SLS provided  
23 inaccurate information to the credit reporting agency (“CRA”); (2) the CRAs notified SLS of the  
24 dispute; and (3) SLS “failed to conduct a reasonable investigation into the accuracy of the disputed  
25 information, in light of the information provided to it by the CRA.” *See Benfield v. Bryco Funding,*  
26 *Inc.*, C 14-1459 PJH, 2014 WL 2604363, at \*5 (N.D. Cal. June 10, 2014) (*citing Gorman v.*  
27 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1154 (9th Cir. 2009)); *see also Hernandez v. Wells*  
28 *Fargo Fin. Nat’l Bank*, 2014 U.S. Dist. 51854 (D. Nev. 2014) (holding that a debt that has been

1 charged off by a creditor does not support a finding of inaccuracy). Plaintiff must also allege that  
2 he was injured because of the failure to conduct the reasonable investigation. *Reagan v. American*  
3 *Home Mortg. Servs., Inc.*, No. C 11–00704 WHA, 2011 WL 2149100, at \*2 (N.D. Cal. May 31,  
4 2011) (to recoup damages under 15 U.S.C. § 1681 s-2(b), plaintiff must be injured because of  
5 defendant’s failure to perform its statutory duty of investigation).

6 Plaintiff’s complaint alleges that a consumer disclosure misreported that after his  
7 bankruptcy was completed, SLS reported the pendency of a “balloon payment of \$38,964 due Apr  
8 2036 ” and that the debt had been “transferred to recovery.” (Am. Compl. (ECF No. 4) at ¶¶ 69,  
9 70.) Defendant alleges that the motion to dismiss must be granted because, citing *Abeyta v. Bank*  
10 *of Am., Nat’l Ass’n., et al.*, 2016 WL 1298109 at \*2 (D. Nev. March 31, 2016), Plaintiff failed to  
11 sufficiently allege in the complaint that SLS claimed the balloon payment was an owed balance on  
12 the loan or that SLS had not reported Plaintiff’s bankruptcy discharge. The critical issue is whether  
13 an historical “due date” and a present “owed balance” are interchangeable terms. *See id.* Plaintiff  
14 responds that the continued reporting of information after the bankruptcy discharge was inaccurate  
15 because the discharge relieves the consumer of any otherwise legal repayment obligations. *See*  
16 *Riekke v. Bank of America, N.A.* 2:15-cv-02312-GMN-VCF, ECF No. 57 at 4, 2016 WL 8737439  
17 at \*2.

18 Assessing these arguments, the Court is not persuaded that the Plaintiff will be unable to  
19 state a claim for relief, and so a stay of discovery is not appropriate. Furthermore, it is important to  
20 note that, even if Defendant’s motion to dismiss is granted, Plaintiff is likely to be given leave to  
21 file an amended complaint to cure the defects in his initial pleading. The standard required to stay  
22 discovery is a stringent one. Discovery would be unnecessarily delayed in too many cases if courts  
23 applied a lenient standard in staying all discovery while awaiting resolution of pending motions.  
24 *Grand Canyon Skywalk Dev. LLC v. Steele*, No. 2:13-cv-00596-JAD-GWF, 2014 WL 60216 at \*3.  
25 The court must be convinced that Defendant’s motion to dismiss will succeed, and the court is not  
26 convinced in this case. The court therefore will deny Defendant’s motion to stay discovery.

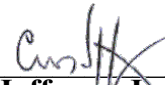
### 27 **III. CONCLUSION**

28 IT IS THEREFORE ORDERED that Defendant SLS’s Motion to Stay Discovery (ECF No.

1 28) is DENIED.

2 IT IS FURTHER ORDERED that the parties must meet and confer and file a stipulated  
3 discovery plan within 21 days from the date of this order.

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5 DATED: November 15, 2017

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8 **C.W. Hoffman, Jr.**  
9 **United States Magistrate Judge**  
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